

180. In his response to the LOI, Turro claimed the ICR was used only to deliver emergency announcements directly for broadcast over the Fort Lee translator made at the request of the Bergen County Office of Emergency Management.²⁴ That claim changed at the hearing, however, when, after testimony that such emergency announcements had not been requested by that local emergency office, Turro stated that there were no such emergency announcements broadcast over the Fort Lee translator from October 1994, until the ICR was deactivated in 1995. In addition, Turro stated that any misimpression as to the number and dates of emergency broadcasts made via the ICR in various statements throughout this proceeding stemmed from confusion on his part as to whether they included times before October 1994, when the ICR was used in conjunction with WNJW, the Franklin Lakes station which Turro consistently maintained was not relevant to this proceeding. However, Sgt. Eironhauser testified that his office had never asked Turro or Jukebox Radio to make emergency announcements of that nature or to interrupt regular programming for announcements of that type.

181. It was not until the hearing that Turro candidly disclosed the use of the ICR to deliver programming to the Fort Lee translator after October 1994. Turro still maintained that, despite confusion about emergency announcements, the Fort Lee translator was rebroadcasting the over-the-air signal of the Pomona translator between January and sometime in 1995, when the ICR was shut off. He then represented that the only time the ICR was

²⁴ Turro later testified that no 30-second translator support messages were broadcast over the Fort Lee translator between October, 1994, and the spring of 1995.

used to deliver programming directly from Dumont to the Fort Lee translator was during Loginow's May 15, 1995, signal generator test. when the ICR's microwave data path was blocked, and the microwave audio path signal was fed directly into the Fort Lee transmitter.

182. Turro was not candid and forthcoming in his representations concerning the use of the ICR between October 1994, and July 1995.²⁵ At first, he described the ICR as being used for telemetry and to insert translator-support and emergency messages, with regular programming included, on a 24-hour basis, on an audio signal only for interference identification purposes. In his response to the Bureau's LOI, the ICR was represented as used for telemetry and emergency announcements, and not a source of programming for the Fort Lee translator. At the hearing, Turro then represented that the ICR was used: 1) for telemetry; 2) to broadcast emergency announcements directly from Dumont to the Fort Lee translator; and 3) as a source of the regular Jukebox Radio programming in the event telemetry to the Fort Lee translator was lost. However, Turro also testified that the ICR had not been used to deliver regular Jukebox Radio programming. In addition, after testimony was received that local officials did not specifically request that emergency announcements be made as previously represented by Turro, Turro conceded that no such emergency announcements had been made by utilizing the ICR.

183. When Turro's ultimate explanation regarding the operation of the Fort Lee

²⁵ Turro's inability to recall whether Dumont testing -- acknowledged by Luna, Gaghan, and Epstein, to have taken place in April, 1995 -- is further evidence of Turro's inability to be candid and his willingness to deceive.

translator was put to the test during Loginow's signal-generator test on May 15, 1995, Turro's representations were proven untrue. Regardless of whether it is appropriate or even logical to use the ICR itself as the initial "back-up" fail-safe in the event ICR-delivery of telemetry is lost, when the entire ICR-delivered microwave signal was blocked by Loginow's signal generator, the Fort Lee translator did not pick up the over-the-air signal of either the Pomona translator or WJUX in Monticello. There is no evidence to doubt the effectiveness of Loginow's signal generator in blocking out the entire ICR-delivered microwave path at the Fort Lee translator on May 15, 1995.

184. Similarly, there is no evidence that the Fort Lee translator was receiving the over-the-air signal of the Pomona translator (or the Monticello station) that day as represented and in a manner mandated by the translator rules. First and foremost, when the ICR microwave signal was blocked by Loginow, the Pomona translator's signal should have been heard over the Fort Lee translator, but, simply, it was not. Second, when Loginow used the signal generator, there was no evidence that a signal from the Pomona translator was being received at the Fort Lee translator. Although Turro claims that he was using receive equipment in the basement that day that would have been immune from Loginow's testing, there is no credible evidence of that.

185. In that regard, there is no evidence that Turro showed basement equipment to anyone, despite the fact that his own consulting engineer was at that location when that equipment was allegedly in place to help Turro prepare a response to the LOI, and they both

believed that the Commission was responsible for the May 15, 1995, jamming incident. Moreover, and despite his belief that the Commission tested the Fort Lee facility on May 15, and that Loginow was under "marching orders from Washington" to get to the bottom of things, Turro neither informed nor showed Loginow any equipment in the basement of the Mediterranean Towers, despite a clear incentive to do so, and a willingness on the part of Loginow to look at whatever Turro showed him. Further, Hurst's testimony that, while in the basement of the Mediterranean Towers, he could not block receipt of Pomona's over-the-air signal on the roof is not relevant as to whether Loginow's signal generator was effective in blocking the signal of the Pomona signal in the basement where reception was significantly aided by another hot spot. Finally, even if Loginow's signal generator test was ineffective to block reception of Pomona's over-the-air signal on May 15, 1995, the fact remains that when the ICR was blocked, the Fort Lee translator went silent and did not broadcast the over-the-air signal of any station.

186. Thus, when Turro made representations to the Commission concerning his relationship with MMBI and the operation of the ICR and translator stations, he knowingly made false statements, or failed to be candid and forthright as to material facts, to the Commission. Moreover, these statements and representations were made with the intent to deceive the Commission concerning the true nature of the relationship between Turro and MMBI, and how WJUX, Monticello, and Turro's translators were being operated. In fact, Turro's evasive answers regarding the subject matters of this hearing commenced in 1991, when the Turro initially sought to devise a method to use the Fort Lee translator to direct

Jukebox Radio programming and commercials to Bergen County and continued through the hearing itself. Turro's evasive answers, his overly literal interpretation of Commission rules and policies, and his admitted failure to be forthcoming with critical facts, unless specifically asked by the Commission, evidence that he was neither truthful nor candid in representations to the Commission.

5. MMBI

187. In this case, there is also compelling and overwhelming evidence that MMBI repeatedly and intentionally misrepresented facts to and lacked candor with the Commission concerning the operation of WJUX and its relationship with Turro, his translators, and Jukebox Radio. MMBI's submissions failed to portray the true nature of its relationship with Turro and Jukebox Radio, one of virtually total dependence.

6. Finances

188. In MMBI's (Weis') response to the LOI and at hearing, Weis stated that he was responsible for all the funds used to purchase equipment, to construct WJUX, and to pay WJUX's operating expenses. While it may be technically correct that he writes checks or otherwise disburses such funds, the actual source of these funds is Turro. For example, although the initial \$40,000 payment from Turro to Weis was characterized as an "inducement" to enter into the NAA with Jukebox Radio, those funds were clearly used as the

down payment on the purchase of the Monticello construction permit. In fact, Weis testified at hearing that, absent that \$40,000 payment, which he did not have to repay, he would not have purchased the construction permit.

189. Similarly, while Weis represented that he paid the station's operating expenses, such as the rent on the main studio and on the tower site, he did not forthrightly disclose that all the money for those expenditures comes directly from Turro in the form of the monthly "network affiliation" payments. In fact, Weis agreed to purchase the construction permit only after he was certain that Turro was obligated -- through the NAA and the Guaranty -- to make these payments. Weis was clear that, from the very beginning of his involvement, the network payments were calculated to ensure that they would cover the purchase price of the Monticello station and all other expenses the station might incur, as well as give him a profit. He testified that "there was never a month where his expenses exceeded the monthly payments." Even more telling is that when Weis, in one of the few decisions he made for the station, purchased additional, costly equipment, he merely informed Turro that the monthly payments would be increased to cover these expenditures. Turro never questioned or objected to these increased payments; he simply paid them.

190. It was not until the hearing that Weis disclosed that he calculated the amount of the monthly payments to cover the station's operating expenses (plus a profit for himself), which were paid by Turro through his controlled entities, BCCBF and, later, through FM 103.1 Inc. Neither Turro nor MMBI disclosed this information in their responses to the LOIs.

Instead, in MMBI's response, Weis merely stated that he provided all the funds used to purchase, construct and operate WJUX, without disclosing until the hearing that the station's only source of revenue was and is the "network" payments paid by Turro under the NAA. Therefore, Weis lacked candor when he said that he was financially responsible for WJUX's expenses. In fact, BCCBF, which was and is under Turro's control, was responsible for the station's finances, and Turro, in turn, personally guaranteed BCCBF's payments.

7. Programming

191. Weis testified that he has always controlled what is or is not broadcast on WJUX. He claims that the NAA gives him such rights because it was his decision to enter into that agreement and that he chose the Jukebox Radio format. The original NAA made no provision for MMBI to exercise any control over programming; rather the NAA provided that Jukebox Radio would furnish WJUX with 100 percent of its programming. The NAA had been amended eleven days before the response to the LOI was filed. MMBI could not have exercised and, in fact, did not exercise meaningful control over programming. Moreover, Weis ultimately acknowledged that MMBI had made no such programming decisions despite the language contained in the amended NAA. The amended NAA attempted to create the impression that MMBI was responsible for many of the licensee responsibilities that had been, and continued to be, performed by Turro and his staff. In reality, the amended NAA was signed in order to make it appear that the arrangement between Turro and MMBI comports with the Commission's rules. Further, it was not until they had received the LOIs that MMBI

and BCCBF (Turro) entered into the amended NAA, which on its face defines more responsibility on the part of MMBI in the alleged network-affiliate relationship. However, MMBI and Turro admit, and the evidence demonstrates, that the amended NAA did not change the way WJUX was operated in any material way.

192. Weis' initial decision to purchase the Monticello construction permit was based on the premise that Turro would provide 100 percent of the programming. Weis later admitted that Turro asked him to purchase the construction permit and build the station because the Commission's rules prohibited Turro from owning both a primary station carrying Jukebox Radio programming and a translator that rebroadcasts that station. Weis based his decision to purchase the WJUX construction permit on the financial arrangement he made with Turro. He did so as an accommodation to Turro and did not intend to make any decisions regarding the operation of the station. He testified repeatedly during the hearing that all he was interested in was making money virtually free of risk. In fact, as an extra measure of security, Weis had Turro sign a Personal Guaranty to ensure that Weis would be reimbursed for all the money he was obligated to pay for WJUX. This extra measure was necessary to protect Weis if Turro eventually obtained origination authority for the Fort Lee station and no longer provided programming to WJUX. Thus, it cannot be said that Weis "chose" the Jukebox Radio format for WJUX; rather, he merely entered into what he viewed as a no-risk business venture to help out a friend.

193. Weis clearly was not candid in his representations to the Bureau concerning his

control over and financial responsibility to WJUX. Despite an attempt to convey those impressions, it is clear that from the very beginning that was not the actual case. In fact, at no time did Weis consider himself at financial risk in relation to WJUX. Come what may, Turro would still be responsible for the station's expenses in the form of the monthly NAA payment. Weis never forthrightly and candidly disclosed these material facts. Instead, he used the response to the LOI and the amended NAA, to attempt to create the impression that he was more involved in the operation of WJUX than was really the case.

194. Further, Weis was not candid in his representations to the Commission concerning the true nature of the relationship between WJUX and Turro. While it is technically accurate that Turro is not the *de jure* owner of the station, he is the *de facto* owner. Weis serves only as a "straw man" in this operation. Turro could not own the station, so he found Weis to stand in his place.²⁶ Any representations to the contrary by Weis and Turro are tantamount to misrepresentations and/or lack of candor.

8. Conclusion

195. Turro and Weis had a logical reason or motive to mislead and deceive the Commission. Specifically, they wanted to avoid further Commission inquiry into their

²⁶ The fact that Turro voluntarily took WNJW silent and voluntarily surrendered its license after Jukebox Radio programming was shifted to WJUX further demonstrates that the primary station associated with the Fort Lee translator was unimportant for any reason other than to supply programming to the Fort Lee translator to serve its Bergen County service area.

operations. It is clear that Turro was well aware that his plan to make it appear that WJUX was a primary station when in fact, the primary station was his Fort Lee translator, was not consistent with Commission rules and policy. His reliance on the 1991 Bureau Letter as support for his scheme was misplaced, and he knew it. The arrangement he made with MMBI and the actual operation of WJUX and the translators was not consistent with what Turro proposed to the Bureau in January, 1991.

196. A finding of lack of candor can properly rest on an omission by the licensee, or a failure to be completely forthcoming, in the provision of pertinent information to a decisional matter. *See Contemporary, supra*, 12 FCC Rcd at 14297-98. Here, the Bureau asked Weis and Turro in the LOIs about the nature of their business relationship. They responded with only the information that would show no impropriety between them and failed to disclose the true nature of their operational and financial relationship. For example, Weis was well aware of the fact that Blabey and Montana were token employees of MMBI because they performed minimal duties and received nominal salaries. Therefore, Weis lacked candor when he failed to disclose the true nature of their positions at WJUX and misrepresented the fact that WJUX lacked a fully staffed and properly equipped main studio. Weis and Turro were also aware that Turro had undue control over the finances and programming decisions of WJUX, which was tantamount to an unauthorized assumption of control, yet they failed to disclose these facts to the Commission. Accordingly, they intentionally withheld relevant information from the Commission in an effort to prevent further inquiry into their activities.

197. Weis and Turro certainly had motive and incentive to conceal the true nature of their technical and financial arrangements from the Commission. They knew or reasonably should have known that their plan was designed to evade the Commission's rules and policies with respect to the operation of a translator station. They also knew that Turro was exerting undue control over the operation of WJUX and, therefore, MMBI, the permittee, was not in any meaningful control of WJUX. Despite later attempts to portray Weis favorably and create the impression that Weis had more control over the operations of WJUX, Weis and Turro were well aware of the fact that Turro, not MMBI, was and continues to be, in control of WJUX. Yet, they concealed these material facts from the Commission.

198. The Commission specified Issue 3 to determine whether Turro misrepresented and/or lacked candor to the Commission concerning the operation of translator stations W276AQ(FM), Fort Lee, New Jersey, and W232AL(FM), Pomona, New York, and Issue 7 to determine whether MMBI and/or its agents misrepresented and/or lacked candor to the Commission concerning the operation of Station WJUX, Monticello, New York. The findings demonstrate and, thus, it is concluded that Turro and MMBI repeatedly misrepresented facts and lacked candor. Accordingly, the Bureau submits that Issues 3 and 7 should be resolved adversely to Turro and MMBI, respectively.

E. Qualifications Issues

199. The findings demonstrate and, thus, it is concluded that neither Turro nor

MMBI can be trusted to be forthright with the Commission, to abide by the Commission's rules and policies, or to otherwise comply with the responsibilities and obligations of a broadcast licensee. In addition, Turro and Weis repeatedly failed to respond candidly to specific Commission inquiries focusing on their relationship. The Bureau submits that these parties were well aware that their actions were an attempt to demonstrate that the operation of WJUX and the translators complied with all applicable Commission rules and policies. In fact, it was Turro's acute knowledge of Commission requirements in the area of translator operations that allowed himself and Weis to run the gamut from being evasive (*e.g.*, claiming no knowledge of what MMBI's inducement fee) to being overly literal (*e.g.*, Weis claiming financial responsibility for, and Turro denying paying, MMBI's expenses when both knew Turro was the ultimate source of funds), as necessary, to obfuscate their responses to inquiries.

200. In their written submissions to the Commission, Turro and Weis purposely provided incomplete, incorrect and misleading information regarding the nature of their relationship, and the operation of the stations. That pattern of evasion and non-disclosure began as early 1991, and continued unabated through oral testimony at hearing. Their disingenuous statements, both orally and in writing, gave the impression that they were in compliance with applicable Commission rules and policies when such was clearly not the case. The Commission's staff had no way of knowing the true facts underlying MMBI's and Turro's relationship and operation of these stations, and did not ascertain such until a complaint was filed, inspections and investigations were conducted, and further inquiry

revealed that the grant of the ICR had not been warranted. Moreover, rather than being candid with the Commission at that time or during any subsequent inquiry during which any misunderstanding of rules or policy might have been clarified, Turro and Weis continued to engage in a concerted and deliberate pattern of evasiveness and deception. The Commission has a right to expect more from its regulatees. In this regard, Turro's statements suggesting that a licensee need only disclose certain facts in order to obtain a Commission authorization or need only answer what is specifically asked of it -- and if the Commission wants to know more it can ask -- evidence his fundamental misunderstanding of the obligations of a licensee to be completely forthright to the Commission.

201. As is abundantly clear from the record, Turro and Weis further demonstrated at hearing that they cannot be trusted. Specifically, Turro, and to a slightly lesser degree, Weis, continued to be evasive in their responses and explanations, and there is nothing to suggest that they yet understand the obligation of a licensee to be forthright with the Commission with regard to the ownership and operation of broadcast facilities. Rather, Turro and Weis have demonstrated that they cannot be relied upon, but will instead do whatever it takes to accomplish their objectives without regard to any regulatory restraints.

202. The Commission designated Issues 4 and 8 to determine whether, in light of the evidence adduced under the previously discussed issues, Turro and/or MMBI possesses the requisite qualifications to be or remain a Commission licensee/permittee. The record evidence establishes and, thus, it is concluded that these parties wilfully and repeatedly

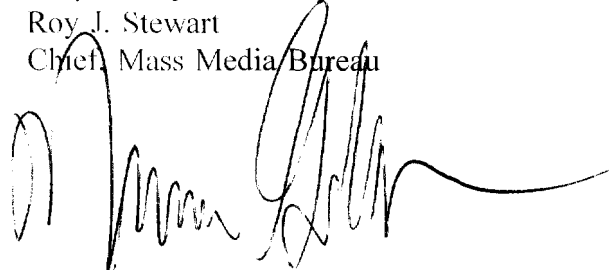
misrepresented material facts and/or failed to be candid with the Commission, and that there is no assurance that they can be trusted to be forthright with the Commission in the future. Their representations repeatedly reflect an inability to be completely forthcoming and a willingness to shade the truth, as well as a disturbing pattern of indifference, evasion or overly literal interpretation of the rules to suit their purposes. The record is also clear that Turro and MMBI will do what it takes to achieve what they want without regard to Commission rules or policies. In their view, it is the Commission's responsibility to decipher a request for an informal ruling and then pose a myriad of questions to determine the *bona fides* of such a request, as well as to elicit any additional undisclosed relevant information, to assure compliance with Commission rules and policies. Quite simply, there is nothing in the record to indicate that Turro or MMBI either understand or can be expected to meet the burden of broadcast licensees to be forthcoming in their dealings with the Commission and to comply with its rules and policies. Accordingly, the Bureau submits that Issues 4 and 8 should be resolved adversely to Turro and MMBI, respectively.

IV. Ultimate Conclusions

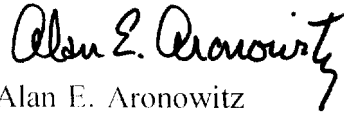
203. Accordingly, the record indicates and Bureau requests that Turro's renewal applications for the above-captioned translator stations be denied, and that MMBI's construction permit for WJUX, Monticello, New York, be revoked. If it is determined that denial of Turro's renewal applications or revocation of MMBI's construction permit for

WJUX is not warranted, the Bureau recommends that the maximum forfeiture of \$250,000 be imposed against each party for their willful and/or repeated violations of Sections 310(d) of the Communications Act of 1934, as amended, and Section 73.3540(a) of the Commission's Rules; for Turro's violations of Sections 74.531(c) and 74.1231(b); and for MMBI's violations of Sections 73.1120 and 73.1125(a) and (c) of the Commission's Rules.

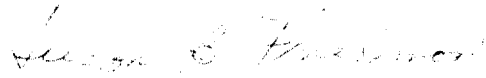
Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



Norman Goldstein
Chief, Complaints &
Political Programming Branch



Alan E. Aronowitz



Suzan B. Friedman
Attorneys
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
Suite 8210
Washington, D.C. 20554
(202) 418-1430

March 13, 1998

CERTIFICATE OF SERVICE

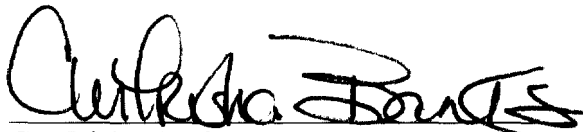
CurTrisha Banks, a secretary in the Enforcement Division, Mass Media Bureau, certifies that she has on this 13th day of March, 1998, sent by regular U.S. mail copies of the foregoing "**Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law**" to

Administrative Law Judge Arthur I. Steinberg
Federal Communications Commission
2000 L Street, N.W., Suite 228
Washington, D.C. 20554

Alan Y. Naftalin, Esq.
Charles R. Naftalin, Esq.
Koteen & Naftalin
1150 Connecticut Ave., N.W.
Washington, D.C. 20036

James P. Riley, Esq.
Fletcher, Heald and Hildreth, P.L.C.
1300 North 17th Street
11th Floor
Rosslyn, VA 22209

Roy R. Russo, Esq.
Richard A. Helmick, Esq.
Cohn and Marks
1333 New Hampshire Ave., Suite 600
Washington, D.C. 20036


CurTrisha Banks